

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Timothy Zubak	Team: Team # 3	CCRB Case #: 200506702	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/12/2005 2:38 AM	Location of Incident: Tentaciones Bar	Precinct: 44	18 Mo. SOL 12/12/2006	EO SOL 12/12/2006	
Date/Time CV Reported Mon, 06/13/2005 11:58 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/15/2005 12:28 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Loftus	18151	935198	044 PCT
2. POM Raymond Timney	30303	935850	044 PCT
3. SGT Osvaldo Nunez	03579	918086	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Natalie Bishop	02063	934496	044 PCT
2. POM Carlos Concepcion	02193	934675	044 PCT
3. SGT Thomas Roberts	03330	895920	044 PCT
4. POF Zoja Shala	16908	935729	044 PCT
5. POM Jose Pachot	21192	935449	044 PCT
6. LT Patrick Cortright	00000	910420	044 PCT
7. POM Carlos Zapata	27730	916951	044 PCT
8. POM Gregory Straub	26331	926176	044 PCT
9. POM Jean Hunt	11325	935035	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Loftus	Abuse: PO John Loftus threatened to arrest § 87(2)(b)	
B.POM Raymond Timney	Force: PO Raymond Timney used physical force against § 87(2)(b)	
C.SGT Osvaldo Nunez	Discourtesy: Sgt. Osvaldo Nunez spoke obscenely to § 87(2)(b)	
D.SGT Osvaldo Nunez	Force: Sgt. Osvaldo Nunez used physical force against § 87(2)(b)	

Synopsis

In the early morning of June 12, 2005, § 87(2)(b) was drinking at “Tentaciones” located at 1350 Jerome Avenue, in the Bronx, when numerous officers entered the location. The CCRB later learned that these officers were at the location to conduct liquor inspections and were part of a multiple agency response team which also included FDNY, and the Liquor Control Board. Officers turned on the lights of the establishment, turned off the music, and instructed all the patrons to remain seated. § 87(2)(b) asked an officer, identified by the CCRB as PO Loftus, if he could leave. PO Loftus informed him that he would not be able to leave until the inspection concluded. § 87(2)(b) ignored PO Loftus’s instructions to remain seated and at one point, PO Loftus told him to sit down or he would be arrested (Allegation A). § 87(2)(b) continued to be uncooperative with various officers’ directions and was then arrested for § 87(2)(b) and transported to the 44th Precinct. At some point, when § 87(2)(b) was inside of the holding cell, an officer identified by the CCRB as PO Timney, allegedly squeezed § 87(2)(b)’s handcuffs, slammed his face against the wall of the adjacent holding cell, and pulled his hands behind his back towards his head (Allegation B). Officers informed § 87(2)(b) who was intoxicated at the time, that he was being released with a summons; § 87(2)(b)’s items were returned to him at the front desk and he was handed a summons for § 87(2)(b). When an officer identified by the CCRB as Sgt. Nunez asked him to leave the precinct, § 87(2)(b) stated that he would like an officer to read him his rights. § 87(2)(b) continued to argue with Sgt. Nunez and Sgt. Nunez allegedly told him to get the “fuck out” of the precinct (Allegation C). Sgt. Nunez then forcefully escorted § 87(2)(b) out of the precinct and allegedly threw him to the ground (Allegation D). Medical documents regarding the treatment provided to § 87(2)(b) on § 87(2)(b) revealed that § 87(2)(b) sustained a fractured wrist. § 87(2)(b) claimed that this injury occurred during his altercation with PO Timney.

§ 87(2)(b) is filing a civil lawsuit against the City of New York requesting compensation in the amount of fifty million dollars for injuries sustained as a result of this incident. As of March 30, 2006, a 50-H hearing has not been scheduled.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) called IAB in the early morning of June 12, 2005, to report that officers threw him down, kicked him, twisted his hands, and handcuffed him (Encl. 2A-B). According to the IAB C/C log, § 87(2)(b) was uncooperative with IAB personnel and disengaged on the telephone and therefore did not provide further details. This complaint was forwarded to the CCRB on June 15, 2005 (Encl. 3F-G). § 87(2)(b) called 911 on June 12, 2005, to report that he got hurt while he was arrested (Encl. 14A-C). § 87(2)(b) received medical treatment on § 87(2)(b), and § 87(2)(b) at § 87(2)(b). In the ACR report, § 87(2)(b) complained of “wanting to go to the hospital” and he also stated that he “drink three beers” (Encl. 3A). In the medical records, § 87(2)(b) stated that NYPD officers “beat him” (Encl. 3E). § 87(2)(b) was interviewed by the CCRB on July 7, 2005 (Encl. 3H-M). During this CCRB interview, § 87(2)(b) provided a written statement of the incident, dated June 13, 2005 (Encl. 3C-D). § 87(2)(b) filed a Notice of Claim dated August 24, 2005, in which he stated that officers, including an officer he referred to as “PO Coftus,” physically assaulted him after he was arrested and issued a fabricated summons (Encl. 3N-P). § 87(2)(b) also viewed photographs of officers that may have been present during the incident on March 22, 2006 (Encl. 3Q-EE).

All of § 87(2)(b)’s statements are generally similar and will therefore be combined in the following summary.

§ 87(2)(b) who is § 87(2)(b)-old, § 87(2)(b). On the evening of June 12, 2005, he went to “Tentaciones,” which is a bar in the Bronx. About 20 minutes after he sat down at the table, he noticed that six or seven plainclothes and uniformed officers entered the location.

PO#1, who was described as a white male in uniform, in his early 30s, and PO#2, who was described as a heavy-set male Hispanic officer in plainclothes, in his early 30s, stood by the table where § 87(2)(b) was seated. § 87(2)(b) said to PO#1 that he felt uncomfortable being there and he wanted to leave. PO#1 responded by telling him to sit down and be quiet. § 87(2)(b) then stood back up after a couple minutes and said to PO#1, "Officer, can I leave? Because of the commotion, I would like to leave! Can you please explain to me why I can't leave?" PO#1 told § 87(2)(b) to be quiet before he gets arrested. At that point, § 87(2)(b) agitatedly asked other unspecified officers why they were keeping everyone at the bar.

At that point, PO#2 grabbed his hands, placed them behind his back, and put handcuffs on him. PO#1 and PO#2 then took § 87(2)(b) outside of the restaurant. Once outside, § 87(2)(b) noticed a police van and two marked police vehicles. § 87(2)(b) stated that there was an officer in a white shirt present, PO#3. § 87(2)(b) was then placed in a van and taken to the 44th precinct. Inside the marked van, PO#1 sat beside § 87(2)(b) in the back seat, and two officers, PO#4 and PO#5 were in the front seat of the van. PO#4 was driving the vehicle and was described as a white male. PO#5 was a Hispanic officer sitting in the passenger side.

Once inside of the stationhouse PO#1 was present when PO#6, who was described as white male, 5'7", heavy-set, 210 lbs., with reddish hair, placed his hands on the handcuffs, and slammed him face first against the wall next to the temporary holding cell while he was handcuffed. PO#6 then pulled his arms that were in handcuffs up towards his head as he was facing the wall of the holding cell. At that point, he heard a crack in his right wrist. PO#6 stated, "You want to be a tough guy, you have a smart mouth inside of the club? It could be worse than this for you." § 87(2)(b) then was placed in a different holding cell with his handcuffs still on.

An hour later, PO#6 threw § 87(2)(b) up against the wall of the holding cell and squeezed his handcuffs on his wrists. The officer said, "Do you want to go home, or do you want to sleep in jail for a weekend?" PO#6 then took the handcuffs off of § 87(2)(b) and instructed him to go to the desk to collect his belongings.

A "largely built" Hispanic officer in plainclothes, PO#7, was behind the desk. § 87(2)(b) asked PO#7 for a reason that he was arrested and he also said that he was upset that he was not read his rights. PO#7 told § 87(2)(b) to "get the fuck out of the precinct" after being handed a summons for § 87(2)(b). § 87(2)(b) was getting his belongings and PO#7 said, "Take your stuff and get out now, don't check anything, just leave the counter." § 87(2)(b) stated, "Can you give me a break to make sure my stuff is in order." PO#7 said, "Go home or we will lock you back up. We already gave you a summons." PO#7 then came out from behind the desk, grabbed § 87(2)(b) behind his shirt and by the waist of his pants, and shoved him into the revolving door leading to the outside of the precinct. At some point during this physical altercation, § 87(2)(b) sustained an injured ankle. PO#7, then grabbed § 87(2)(b)'s face, giving him leverage to hit § 87(2)(b)'s face against the pavement outside of the precinct. § 87(2)(b) was in front of the precinct when he called 911 twice from his cell phone and one time from a payphone on the corner. The ambulance came and he was taken to § 87(2)(b) and was treated for pain to his wrist and ankles. § 87(2)(b) had not requested medical attention at the precinct.

On March 22, 2006, § 87(2)(b) was shown photographs of twelve officers that the CCRB believed to be at the location of the incident (Encl.). After looking at the photograph of Sgt. Nunez, § 87(2)(b) was fairly certain that this was PO#7, who forcibly took him out of the precinct after he was issued a summons. § 87(2)(b) identified PO Zapata as being present at the club where he was apprehended and also behind the front desk when he was forcefully taken out of the precinct. § 87(2)(b) identified PO Timney as PO#6, who was the officer that applied pressure to his handcuffs and eventually used force that dislocated his wrist. After viewing the photograph of Sgt. Roberts, § 87(2)(b) stated that this officer was present in the cell area when PO Timney used force against him.

§ 87(2)(b) stated that PO Concepcion, PO Hunt, PO Bishop, PO Shala, and PO Pachot were not present during the incident. § 87(2)(b) stated that he was not sure whether PO Loftus was present during the incident. However, PO Loftus did not use any force against him. § 87(2)(b) recognized the photographs of

Lt. Cortright and PO Staub. § 87(2)(b) stated that Lt. Cortright accompanied him to the precinct with other officers, however, § 87(2)(b) stated that he did not believe that Lt. Cortright witnessed any force that was used on him by officers inside of the precinct. § 87(2)(b) stated that he saw PO Staub outside of the bar when other officers were escorting him inside of the van.

Results of Investigation

Potential Witness Not Interviewed at the CCRB

The only individuals inside of the holding area of the precinct that could have potentially witnessed the force being used against § 87(2)(b) are § 87(2)(b) and § 87(2)(b). § 87(2)(b) was arrested at 10:17PM and was released at 2:05AM on June 12. § 87(2)(b) was not listed in the command log, but according to the prisoner holding pen for June 11, 2005, § 87(2)(b) was arrested at 10:30PM and released at 2:05AM on June 12, 2005. All of the other individuals in the holding cell left the precinct, were taken either to central booking, or issued a DAT prior to § 87(2)(b) arriving at the precinct. § 87(2)(b)'s number was not listed in Metrosearch or Coles telephone directory. A please call letter was sent to this potential witness on March 10, 2006. As of March 30, 2006, § 87(2)(b) has not contacted the CCRB investigator. § 87(2)(b)'s information is not known, since, as stated above, his contact information is not listed in the command log and his arrest is not indicated in the BADS database.

Identification of Officers Interviewed

Sgt. Nunez was interviewed at the CCRB after his name was listed on the IAB report as being involved with § 87(2)(b) at some point during the incident. PO Loftus was interviewed at the CCRB after his name was listed on the § 87(2)(b) summons issued to § 87(2)(b). PO Loftus confirmed that he issued the summons during his CCRB interview and further stated that he was working with a number of other officers including PO Timney, PO Concepcion, and Sgt. Roberts. § 87(2)(g)

Officer Statements

Sgt. Osvaldo Nunez

Sgt. Osvaldo Nunez was interviewed at the CCRB on November 30, 2005, (Encl. 8A-H). On June 11, 2005 going into June 12, 2005, Sgt. Nunez was in uniform, working a 1730x0227 over-time tour. Sgt. Nunez was partnered with PO Carlos Zapata, assigned to an unmarked Chevy Impala #§ 87(2)(b). PO Zapata was the operator, however PO Gregory Straub was also in the vehicle with Sgt. Nunez.

Sgt. Nunez was the supervisor for the MARCH program. MARCH stands for Multiple Agency Response to Community Hotspots. Sgt. Nunez was part of a team that was conducting compliance checks at local bars. The Department of Health, the FDNY and other agencies were also at the locations of the many bars and establishments that Sgt. Nunez and his unit visited throughout the night. Sgt. Nunez did not have any entries in his memobook regarding the particular incident that occurred. Sgt. Nunez also did not list in his memobook the particular bars they went to during the tour. Sgt. Nunez went to approximately seven locations and the last location was at Tentaciones located on 1350 Jerome Avenue, in the Bronx.

Sgt. Nunez entered the location with the city agencies and approximately eight officers. Sgt. Nunez noticed as he walked through the front entrance that there was a bar to the left and there was a seating area to the right. When you walk past the bar towards the back, there are two steps that lead to another main seating area. That night there was a large number of patrons at the location.

Sgt. Nunez and his team of officers turned off the music, turned on the lights, and told everyone to remain seated. The officers would tell everyone to remain seated for their safety, since Sgt. Nunez stated, "We don't know who is armed, we don't know who is carrying what."

The Department of Health was issuing summonses to the bar owners and approximately 15 minutes later Sgt. Nunez was 20 feet away from the main seating area when he noticed 3 or 4 officers surrounding § 87(2)(b) who was standing up beside a table in the main seating area. Sgt. Nunez could not hear any of the conversation, since he was 20 feet away and there was crowd noise from the bar. § 87(2)(b) was handcuffed by an unspecified officer, brought outside, and taken to the precinct. Sgt. Nunez stated that one of the officers surrounding § 87(2)(b) outside of the bar was Lt. Patrick Cortright, who was in uniform, wearing a white shirt. Sgt. Nunez did not know who the other officers were. Sgt. Nunez did not know at the time why the individual was arrested, but an unspecified officer told him later that he was being disorderly.

Sgt. Nunez did not recall if this individual was transported before Sgt. Nunez left or if the officers that were involved with the apprehension waited for the group to finish doing the compliance checks before going back to the precinct with § 87(2)(b). Sgt. Nunez was not involved in transporting § 87(2)(b). After leaving the location, Sgt. Nunez went back to the precinct in the same vehicle with the same two officers that he arrived with. The investigator mentioned that in Sgt. Nunez's statement over the phone to IAB, it was reported that he gave the names of PO Loftus and PO Timney. Sgt. Nunez stated that he did not recall giving PO Timney's name as a participant, and he did not see PO Loftus at the bar that night.

Sgt. Nunez stated that when he went back to the precinct immediately after the bar, he went behind the desk and filled out an activity sheet. Sgt. Nunez never saw § 87(2)(b) in the holding cell area. At one point, PO Loftus brought § 87(2)(b) before the desk and told Sgt. Nunez that he was being released with a summons for § 87(2)(b). Sgt. Nunez noticed at that point that § 87(2)(b) was intoxicated.

§ 87(2)(b) was given the summons at the desk and was told he was free to go. § 87(2)(b) did not want to leave the precinct. Sgt. Nunez stated that neither he nor any other officer spoke obscenely to § 87(2)(b) at the precinct. Sgt. Nunez also stated that he did not feel the need to use the word "fuck" in order to get him to comply with an order or direction. Sgt. Nunez explained that § 87(2)(b) refused to leave after being told numerous times. Sgt. Nunez gave § 87(2)(b) a warning and told him that if he did not leave they would have to physically remove him. § 87(2)(b) still did not comply, so Sgt. Nunez came out from behind the desk and he grabbed § 87(2)(b)'s upper arm. PO Loftus then grabbed § 87(2)(b)'s other arm. Both officers then dragged § 87(2)(b) 20 feet to the precinct exit. During this time, § 87(2)(b) was dragging his feet and making resistance. When at the exit, which was described as two glass doors that swing out, Sgt. Nunez kept his right hand on § 87(2)(b)'s arm and then used his left arm to push the door open. Sgt. Nunez was to the side of § 87(2)(b) and then he told him that he had to leave. At that point he pulled § 87(2)(b) through the doors and out to the sidewalk. Sgt. Nunez stated that § 87(2)(b) never landed on the ground, but he also stated that § 87(2)(b) was not on his feet. Once § 87(2)(b) was pulled out of the precinct, Sgt. Nunez went back inside and he did not see § 87(2)(b) again. IAB contacted Sgt. Nunez later that night and told him that an ambulance was called to the scene and the complainant mentioned that he was injured by police officers.

PO John Loftus

PO Loftus was interviewed at the CCRB on August 31, 2005 (Encl. 4A-F). PO Loftus was in uniform, assigned to an impact post in van #5417. PO Loftus was with PO Bishop, PO Concepcion, PO Hunt, PO Pachot, PO Shala, and PO Timney. Sgt. Roberts was also in the van acting as the supervising officer. PO Loftus read his memobook entries verbatim: "0120- 1 under inside 1350 Jerome Avenue. 0130 brought back to 044 Precinct. Deft. intox at time of arrest. Very belligerent and uncooperative. Brought back to 044 Precinct to sober up and issued summons § 87(2)(b). 0235 Deft released at own recognizance, uncooperative when released. Deft. very unruly when released."

PO Loftus's assignment on June 12, 2005, was to go to different establishments to check liquor licenses. At some point during his tour, he arrived with his partners at a bar located on 1350 Jerome Avenue, in the Bronx. PO Loftus entered the establishment and saw § 87(2)(b) sitting by himself. § 87(2)(b) got up from his seat and approached PO Loftus. § 87(2)(b) was asking PO Loftus what they were doing there. PO Loftus stated that he was generally being unruly. PO Timney and PO Concepcion went to assist PO Loftus since § 87(2)(b) was being uncooperative in complying with PO Loftus's orders to remain seated. PO Loftus then asked for identification because § 87(2)(b) was obstructing the officer's ability to conduct the

compliance checks by being combative. PO Loftus eventually acquired § 87(2)(b)'s identification and he then took the identification to the van to run § 87(2)(b)'s name and issue him a summons for § 87(2)(b).

When PO Loftus came back into the bar where § 87(2)(b) was stopped, he saw four unspecified officers take § 87(2)(b) who was in handcuffs, outside of the bar. PO Loftus placed § 87(2)(b) inside of their van. En-route to the precinct, § 87(2)(b) did not say anything about his handcuffs being too tight and did not complain about any injuries. PO Loftus brought § 87(2)(b) in front of the desk and then placed him in the cell. No other officers were present when PO Loftus was placing § 87(2)(b) in the cell. § 87(2)(b) was generally being uncooperative at that point, since he was moving around and acting intoxicated. PO Loftus believed that the individual was intoxicated, since he smelled alcohol on his breath and he was moving side to side.

PO Loftus never pushed § 87(2)(b) against the wall of the holding cell. PO Loftus never kicked § 87(2)(b)'s legs apart before putting him in the cell. At one point PO Loftus had to replace handcuffs on § 87(2)(b) while in the cell because he was being a danger to a fellow prisoner by flailing his arms. PO Loftus stated that he never twisted § 87(2)(b)'s arm up when it was in handcuffs. PO Loftus stated that § 87(2)(b) never complained of any injuries at the precinct. PO Loftus did not see any officer use physical force against § 87(2)(b).

PO Loftus could not remember who the desk officer was, and stated that it was not any of the officers shown on the roll call. PO Loftus decided to release him with a summons, he wrote the summons, took § 87(2)(b) out of the cell, and gave him his property. § 87(2)(b) was still uncooperative and he said, "I want a lawyer. Fuck you why the fuck are doing this to me? § 87(2)(b)!" PO Loftus told § 87(2)(b) to relax and that he was going home soon.

PO Loftus witnessed § 87(2)(b) exit the precinct under his own recognizance and there was no other incident to note. PO Loftus did not see any physical force being used against § 87(2)(b).

Sgt. Thomas Roberts

Sgt. Roberts was interviewed at the CCRB on October 20, 2005, (Encl. 7A-E). Sgt. Roberts stated that on June 12, 2005, he was in a blue uniform assigned to marked van #5417. Sgt. Roberts was in the van with PO Bishop, PO Concepcion, PO Hunt, PO Loftus, PO Shala, and PO Timney. Sgt. Roberts did not have any memobook entries regarding the incident.

Sgt. Roberts and his team went to a bar where Sgt. Nunez and other units were already present. An unidentified officer made Sgt. Roberts aware that PO Loftus and PO Timney transported a prisoner from the bar to the precinct. Sgt. Roberts never saw this prisoner and also did not have any interaction with the prisoner. Since Sgt. Roberts was in a different location of the bar, he did not see this perpetrator being escorted to the van in handcuffs.

Sgt. Roberts went back to the precinct after his duties at the bar were concluded. Sgt. Roberts did not recall any incident occurring at the stationhouse, and he also did not see any force being used against the individual. Sgt. Roberts stated that no officer from his unit informed him that a perpetrator needed medical treatment and no officers informed him about anything that occurred.

PO Raymond Timney

PO Timney was interviewed at the CCRB on October 19, 2005, (Encl. 5A-E). PO Timney did not have any memobook entries regarding any bars that they arrived at to do compliance checks.

PO Timney stated that at one of the bars they went to PO Loftus issued a C-summons to an individual. This individual was taken to the precinct and released. PO Timney stated that the individual became belligerent with PO Loftus and officers arrested him. PO Timney did not see the apprehension at the bar,

but he was led to believe that this individual was being unruly. PO Timney did not recall which officer gave him this information.

PO Timney did not see any force being used against an individual who was released with a summons at the precinct. PO Timney stated, "I barely remembered the evening, all I remember is from third party information."

PO Carlos Concepcion

PO Concepcion was interviewed at the CCRB on October 19, 2005 (Encl. 6A-D). PO Concepcion was assigned to a van with PO Timney. PO Concepcion did not have any entries in his memobook regarding the incident and stated that he had no knowledge of the incident.

PO Concepcion stated that all he remembered about that day is going to a couple bars and checking for licenses. PO Concepcion was assigned to the doors of the bars and he did not remember anything occurring at the locations. PO Concepcion did not see or hear about any force being used against any individual at a precinct. PO Concepcion stated that he did not see anyone get apprehended at any of the bars that he and his fellow officers went to during his tour that day. PO Concepcion stated that he did not apprehend anyone.

Officers Not Interviewed

From roll call documents and various officer statements, it was determined by the CCRB that PO Zapata, PO Straub, and Lt. Cortright were present at the location where § 87(2)(b) was apprehended. § 87(2)(b) recognized these officers during his photo array. § 87(2)(b) stated however, that he only saw Lt. Cortright and PO Straub outside of the bar when he was being escorted out in handcuffs and further stated that they did not witness any force being used against him by officers. § 87(2)(b) stated that PO Zapata was present when an officer, § 87(2)(b) identified as Sgt. Nunez, forcefully escorted him out of the precinct, however PO Zapata was not alleged to have used any physical force against § 87(2)(b) § 87(2)(g)

§ 87(2)(b) did not recognize PO Hunt, PO Bishop, PO Pachot, and PO Shala as being present at any point during the incident either at the bar or the precinct § 87(2)(g)

Medical Documents

Ambulance Call Report

The ACR was filled out for § 87(2)(b) on § 87(2)(b). The medical present problem was "alcohol abuse." The presumptive diagnosis was "ETOH." In the treatment narrative, EMT personnel mentioned that the patient was uncooperative, the patient was also listed as being "unremarkable," and that § 87(2)(b) had a positive alcohol smell on his breath (Encl. 9-Z).

§ 87(2)(b)

§ 87(2)(b) was transported via ambulance to the emergency room on § 87(2)(b). § 87(2)(b) was found to be intoxicated and a social work intervention form was filled out for § 87(2)(b) in the emergency room for alcohol abuse.

X-rays of § 87(2)(b)'s right ankle was negative for fractures or dislocation. X-rays of § 87(2)(b)'s right wrist showed a non-displaced styloid fracture. The physician's notes mention that a wrist splint was applied to § 87(2)(b)'s right arm. § 87(2)(b) was informed to take Advil for wrist pain he was told to receive follow-up treatment (Encl. 9A-Z).

§ 87(2)(b)

§ 87(2)(b) walked into the emergency room on § 87(2)(b). During this visit, medical personnel to § 87(2)(b) to receive follow-up care at an orthopedic physician and was discharged (Encl. 9A-Z). As of § 87(2)(b)'s CCRB interview on July 7, 2005, he had not received follow-up treatment.

Police Department Documents

Roll Call

The tour 3 roll call for the 44th Precinct on June 11, 2005, going into June 12, 2005, indicated that Lt. Cortright was the platoon commander. According to the roll call, PO Bishop, PO Concepcion, PO Hunt, PO Loftus, PO Pachot, PO Shala, and PO Timney were assigned to a foot post detail assignment (Encl. 10A-K).

Command Log/ Prisoner Holding Pen

The command log and holding pen roster for June 11, 2005, and June 12, 2005, for the 44th Precinct indicated that § 87(2)(b) was brought into the precinct at 1:30AM and issued a summons for § 87(2)(b) at 2:00AM by PO John Loftus. § 87(2)(b)'s physical conduction was listed as "intoxicated" (Encl. 11A-E/ 12A-C).

Summons

PO Loftus issued summons § 87(2)(b) to § 87(2)(b) at 1:15AM for an incident that occurred inside of 1350 Jerome Avenue, in the Bronx. § 87(2)(a) 160.50 (Encl. 13A).

SPRINT

EMS arrived at the location to treat § 87(2)(b) at § 87(2)(b). At 2:37AM, PO Clerk from IAB was notified of the incident. At § 87(2)(b), it was noted by EMT personnel that the individual being treated was intoxicated (Encl. 14A-C).

Police Officer CCRB History

PO John Loftus does not have any substantiated CCRB complaints in his one-year tenure as an NYPD officer (Encl. 1A-E).
Sgt. Osvaldo Nunez has not been disciplined as a result of substantiated CCRB allegations in his nine-year tenure (Encl. 1A-E).
PO Raymond Timney does not have any previous CCRB allegations in his one-year-tenure as an NYPD officer (Encl. 1A-E).

Complainant CCRB History

§ 87(2)(b) has not filed any previous CCRB complaints (Encl. 1A-E).

Summons Disposition

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Identification of Subject Officers

Even though § 87(2)(b) did not recognize the photo of PO Loftus when shown photographs of officers on March 22, 2006, § 87(2)(b)'s description of PO#1 resembled PO Loftus's pedigree information. § 87(2)(b) stated that he had a conversation inside the bar with PO#1, who was described as a white male officer in his early 30s. PO Loftus's CCRB testimony confirmed that he had a conversation with § 87(2)(b) and eventually asked for § 87(2)(b)'s identification after he was being uncooperative. PO Loftus also stated that he rode in the van with § 87(2)(b) on the way to the 44th Precinct. § 87(2)(b) also stated that PO#1 was present in the van en-route to the precinct. § 87(2)(g)

§ 87(2)(b) identified PO Timney as the officer that used force against him by the holding cell area after being shown his photo on March 22, 2005. § 87(2)(b)'s description of this officer during his CCRB interview matched his pedigree information. § 87(2)(b) described PO#6 as a red-haired white male, approximately 210 lbs. PO Timney is a 200 pound white male. § 87(2)(g)

Lastly, § 87(2)(b) identified Sgt. Nunez as the officer that forcefully expelled him from the 44th Precinct. Sgt. Nunez confirmed his involvement during his CCRB interview § 87(2)(g)

Undisputed Facts

It is undisputed that § 87(2)(b) was involved in an argument with police officers, including PO Loftus, inside of the bar prior to being apprehended. It is also undisputed that § 87(2)(b) did not request medical treatment inside of the precinct. § 87(2)(b) was issued a summons by PO Loftus for § 87(2)(b).

Credibility

PO Loftus and Sgt. Nunez testified that § 87(2)(b) was intoxicated during the incident. The medical personnel that treated § 87(2)(b) at § 87(2)(b) confirmed these officers' statements that § 87(2)(b) was intoxicated. § 87(2)(g)

§ 87(2)(b) stated that when he was in the holding area he heard his wrist crack when PO Timney pushed his arms up towards his head. Shortly after this occurred, § 87(2)(b) stated that he was involved in a verbal argument with Sgt. Nunez at the front desk because he was upset that officers did not read him his rights. At no point did § 87(2)(b) tell Sgt. Nunez what occurred inside of the holding cell, nor did he complain of having an injured wrist. § 87(2)(b) was diagnosed with a non-displaced styloid fracture in his right wrist. § 87(2)(g)

§ 87(2)(g)

PO Loftus testified that § 87(2)(b) left the precinct under his own recognizance. § 87(2)(g)

§ 87(2)(g) The IAB log listed PO Timney as a subject officer § 87(2)(g)

Allegations Not Pled

§ 87(2)(g)

Allegation A: Abuse of Authority: PO John Loftus threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that PO Loftus threatened to arrest him if he did not comply with his orders to stay seated while officers were inspecting the bar for illegal activity. § 87(2)(b) stated that he was not being cooperative with PO Loftus's orders to remain seated because he was scared and he was not aware of what the officers were doing. PO Loftus stated that he never threatened § 87(2)(b) with arrest. Other officers interviewed that testified they were at the location, however they did not hear or remember the conversation that occurred between § 87(2)(b) and PO Loftus. § 87(2)(b) gave a more detailed account of the encounter than all of the other officers interviewed. § 87(2)(g)

Allegation B: Force: PO Raymond Timney used physical force against § 87(2)(b)

§ 87(2)(b) stated that PO Timney took § 87(2)(b) out of the holding cell, pushed his face against the adjacent wall of the cell, and then forcefully pulled his arms towards his head. PO Timney stated that he barely recalled the incident and further testified that he did not use any force against § 87(2)(b). All of the other officers interviewed stated that they did not see any force being used by officers at the precinct. § 87(2)(b) gave a fairly detailed account of the incident that allegedly occurred. § 87(2)(g)

Medical records indicated that § 87(2)(b) sustained a fracture to his left wrist. § 87(2)(g)

Allegation C: Discourtesy: Sgt. Osvaldo Nunez spoke obscenely to § 87(2)(b)

Allegation D: Force: Sgt. Osvaldo Nunez used physical force against § 87(2)(b)

After PO Loftus issued § 87(2)(b) a summons for § 87(2)(b), he was given his belongings and released. § 87(2)(b) then argued with Sgt. Nunez at the front desk, asking him about his Miranda rights, and the justification for his arrest. § 87(2)(b) alleged that Sgt. Nunez told him to "get the fuck out" of the station house. Sgt. Nunez denied using profanity and none of the witness officers interviewed, including PO Loftus, admitted to hearing Sgt. Nunez verbally confronting § 87(2)(b) in this manner. Sgt. Nunez further stated that he did not feel the need to curse at § 87(2)(b) in order to gain compliance. § 87(2)(g)

After Sgt. Nunez told him to get the "fuck" out of the precinct, § 87(2)(b) stated that Sgt. Nunez grabbed his arms, pushed him into the precinct door, and then slammed him into the pavement outside the station house. Sgt. Nunez admitted to grabbing both of § 87(2)(b)'s arms and dragging him to the front of the station house to physically escort him out after he refused to leave on his own. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: